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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91183753
Party	Defendant Yassinn Patrice Diallo
Correspondence Address	YASSINN PATRICE DIALLO 2 SQUARE TRIBORD COURCOURONNES, 91080 FRANCE yassinn.diallo@laposte.net
Submission	Opposition/Response to Motion
Filer's Name	Yassinn Patrice Diallo
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Signature	/yassinn patrice diallo/
Date	08/16/2010
Attachments	Answer_to_motion_to_strike_respondent-s_brief_on_merit.pdf (7 pages) (962395 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HEAVEN HILL DISTILLERIES, INC)	
)	
Opposer,)	
)	Opposition No.91183753
V.)	
)	Serial No. 77/266,196
)	Mark HYPNOTIZER
)	
DIALLO YASSINN PATRICE,)	Intl Class: 033
)	
Respondent,)	

ANSWER TO MOTION TO STRIKE RESPONDENT'S BRIEF ON MERIT

Defendant's Yassinn Patrice DIALLO, respectfully requests to the Trade Mark Trial and Appeal Board to reject the Motion to strike and the observations, arguments and elements sent by the Opposer as they have no ground.

As ground for the answer to this motion to strike respondent's brief, include all exhibits and testimony including the one of Norman Drew WESLEY, Justin AMES, and direct examination made By Matthew WILLIAMS, during the testimony period of the Opponent. In fact numerous and factual allegations are not supported by the evidence of records, and moreover fail to comply with the rules "37 CFR 2.123(d): Persons before whom depositions may be taken".

In fact depositions may be taken only before persons designated by Rule 28 of the Federal Rules of Civil Procedure.

During their designated testimony deposition period, the Heaven Hill's counsel, Matthew WILLIAMS, asked Norman DREW WESLEY vice president of Keller Crescent's working for the promotion of Heaven Hill product HPNOTIQ and Justin Sidney Ames, senior brand manager of HPNOTIQ working for Heaven Hill to testify. They are all employees and have interests in the action so their testimonies must be rejected.

On the ground of Rule 28 of the Federal Rules of Civil Procedure 37 CFR 2.123 (d), Applicant requests the TTAB to reject deposition made by Drew Wesley, Justin Ames and direct examination made by Matthew Williams. In fact, they are in conflict of interests in their depositions and direct examination, as they are employees and legal counsel of the opposer Heaven Hill Distilleries.

Rule 37 CFR 2.123(d) Persons before whom depositions may be taken:

Depositions may be taken before persons designated by Rule 28 of the Federal Rules of Civil Procedure.

(a) Within the United States. Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term officer as used in Rules 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(c) Disqualification for Interest: **No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.**

Moreover we were not obliged to make testimonies; indeed the TTAB does not impose these obligations. Besides we do not invent testimonies.

Heaven HILL claim that they received our mail sent April 17th, 2010, which is two days before the close of Diallo's testimony period. Heaven Hill agreed on November 11th, 2008 to correspond by first class e-mail (exhibit A) [See Matthew Williams Heaven Hill's e-mail]. Besides TMBP rule 37 CFR § 2.119 (c) allows this possibility:

Rule 37 CFR § 2.119 Service and signing of papers. (c): When service is made by first-class mail, "Express Mail," or overnight courier, the date of mailing or of delivery to the overnight courier will be considered the date of service.

Furthermore for several months Heaven Hill do not send back nor sign off the acknowledgements of receipt, conforming to rules and made no effort to comply with the the board's rules, while I sign systematically the sendings of Heaven Hill by overnight courier (Federal Express). Finally the sendings of France to the United States do not take more than a week. Heaven Hill counsel does not bring forward the proof of what he advances 'resulting not receiving the filing until thirty-two days later' in May 2010 which is impossible.

While the Heaven Hill counsel, Matthew WILLIAWS, as a professional and specialist law firm in the intellectual property, makes no effort to comply with the Board rules and still nor with the rules of the **TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE** 37 CFR 2.123(d): 'Persons before whom depositions may be taken, depositions may be taken before persons designated by Rule 28 and 29 of the Federal Rules of Civil Procedure, (c) Disqualification for Interest'.

Since then he has obviously made no attempt to do so, the Board should reject Heaven's Hill Testimony and exhibits and evidences collected and produced during his testimony period.

Moreover we respectfully ask the TTAB to strike this motion has they have no grounds.

Respectfully submitted

DIALLO YASSINN PATRICE

PROOF OF SERVICE

I hereby certify that a true and correct copy of answer to motion to strike for Defendant's was served on the following attorney for Opposer by deposit in the French Mail, in Paris France, in a sealed envelope, with first class postage fully prepaid this 15 August, 2010.

Matthew A. Williams

Wyatt Tarrant & Combs, LLP

500 West Jefferson Street, Suite 2800

Louisville, KY 40202

UNITED STATES.

502-562-7378 Telephone

Dated: August 15, 2010

DIALLO YASSINN PATRICE

EXHIBIT A



Contenu du message

Expéditeur : "Williams, Matthew" <mwilliams@wyattfirm.com>

Destinataire : "yassinn.diallo" <yassinn.diallo@laposte.net>

Date : 13/11/08 20:39

Objet : Responses to Discovery Requests and Other Papers;
Ser
vice of Papers

Voir l'entête complet

Dear Mr. Diallo,

Per the request you made to me during our phone conversation today, I am sending you by First Class mail copies of Heaven Hill Distilleries, Inc.'s Responses to you Requests for Admissions. These Responses were timely served on you by overnight courier (Federal Express) on November 5, 2008. Enclosed with the Responses you will also find Heaven Hill's Motion for Summary Judgment that was served on you by overnight courier (Federal Express) on November 4, 2008.

It is my understanding that in the future you would like for me to serve all papers on you via First Class mail rather than overnight courier. Accordingly, in the future all papers will be served by using the United States Postal Service's First Class Mail International service. If my understanding of your request is incorrect, please advise as to the manner in which you would like for me to serve papers on you.

Finally, if you would consent to service by electronic mail, we could put these issues aside.

Kind regards,
Matt

Matthew A. Williams
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